

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 403

Introduced by Friend, 10; Synowiecki, 7

Read first time January 12, 2005

Committee: Judiciary

A BILL

1 FOR AN ACT relating to motor vehicle homicide; to amend section
2 29-2221, Reissue Revised Statutes of Nebraska, and
3 section 28-306, Revised Statutes Supplement, 2004; to
4 provide a penalty for committing motor vehicle homicide
5 while operating a motor vehicle on a suspended, revoked,
6 canceled, impounded, or disqualified operator's license;
7 to change provisions relating to habitual criminals; and
8 to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-306, Revised Statutes Supplement,
2 2004, is amended to read:

3 28-306. (1) A person who causes the death of another
4 unintentionally while engaged in the operation of a motor vehicle
5 in violation of the law of the State of Nebraska or in violation of
6 any city or village ordinance commits motor vehicle homicide.

7 (2) Except as provided in ~~subsection (3)~~ subsections (3)
8 and (4) of this section, motor vehicle homicide is a Class I
9 misdemeanor.

10 (3) (a) If the proximate cause of the death of another is
11 the operation of a motor vehicle in violation of section 60-6,213
12 or 60-6,214, motor vehicle homicide is a Class IIIA felony.

13 (b) If the proximate cause of the death of another is the
14 operation of a motor vehicle in violation of section 60-6,196 or
15 60-6,197.06, motor vehicle homicide is a Class IIIA felony. The
16 court shall, as part of the judgment of conviction, order the
17 person not to drive any motor vehicle for any purpose for a period
18 of at least sixty days and not more than fifteen years and shall
19 order that the operator's license of such person be revoked for the
20 same period.

21 (c) If the proximate cause of the death of another is the
22 operation of a motor vehicle in violation of section 60-6,196 or
23 60-6,197.06, motor vehicle homicide is a Class III felony if the
24 defendant has a prior conviction for a violation of section
25 60-6,196 or 60-6,197.06, under a city or village ordinance enacted
26 in conformance with section 60-6,196, or under a law of another
27 state if, at the time of the conviction under the law of such other
28 state, the offense for which the defendant was convicted would have

1 been a violation of section 60-6,196. The court shall, as part of
2 the judgment of conviction, order the person not to drive any motor
3 vehicle for any purpose for a period of at least sixty days and not
4 more than fifteen years and shall order that the operator's license
5 of such person be revoked for the same period.

6 (d) An order of the court described in subdivision (b) or
7 (c) of this subsection shall be administered upon sentencing, upon
8 final judgment of any appeal or review, or upon the date that any
9 probation is revoked.

10 (4) A person who causes the death of another
11 unintentionally while engaged in the operation of a motor vehicle
12 during a time when his or her operator's license is suspended,
13 revoked, canceled, or impounded or, in the case of a commercial
14 driver's license, subject to a disqualification or an
15 out-of-service order, is guilty of a Class IIIA felony.

16 Sec. 2. Section 29-2221, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 29-2221. (1) Whoever has been twice convicted of a
19 crime, sentenced, and committed to prison, in this or any other
20 state or by the United States or once in this state and once at
21 least in any other state or by the United States, for terms of not
22 less than one year each shall, upon conviction of a felony
23 committed in this state, be deemed to be a habitual criminal and
24 shall be punished by imprisonment in a Department of Correctional
25 Services adult correctional facility for a mandatory minimum term
26 of ten years and a maximum term of not more than sixty years,
27 except that:

28 (a) If the felony committed is in violation of section

1 28-303, 28-304, 28-308, 28-313, 28-319, 28-502, 28-929, or 28-1222,
2 and at least one of the habitual criminal's prior felony
3 convictions was for a violation of one of the sections listed in
4 this subdivision or of a similar statute in another state or of the
5 United States, the mandatory minimum term shall be twenty-five
6 years and the maximum term not more than sixty years;

7 (b) If the felony committed is in violation of subsection
8 (3) or (4) of section 28-306 and at least one of the prior
9 convictions is in violation of subsection (3) or (4) of section
10 28-306 and the other is in violation of one of the sections set
11 forth in subdivision (a) of this subsection or if the felony
12 committed is in violation of one of the sections set forth in
13 subdivision (a) of this subsection and both of the prior
14 convictions are in violation of subsection (3) or (4) of section
15 28-306, the mandatory minimum term shall be twenty-five years and
16 the maximum term not more than sixty years; and

17 (c) If a greater punishment is otherwise provided by
18 statute, the law creating the greater punishment shall govern.

19 (2) When punishment of an accused as a habitual criminal
20 is sought, the facts with reference thereto shall be charged in the
21 indictment or information which contains the charge of the felony
22 upon which the accused is prosecuted, but the fact that the accused
23 is charged with being a habitual criminal shall not be an issue
24 upon the trial of the felony charge and shall not in any manner be
25 disclosed to the jury. If the accused is convicted of a felony,
26 before sentence is imposed a hearing shall be had before the court
27 alone as to whether such person has been previously convicted of
28 prior felonies. The court shall fix a time for the hearing and

1 notice thereof shall be given to the accused at least three days
2 prior thereto. At the hearing, if the court finds from the
3 evidence submitted that the accused has been convicted two or more
4 times of felonies and sentences imposed therefor by the courts of
5 this or any other state or by the United States, the court shall
6 sentence such person so convicted as a habitual criminal.

7 (3) If the person so convicted shows to the satisfaction
8 of the court before which the conviction was had that he or she was
9 released from imprisonment upon either of such sentences upon a
10 pardon granted for the reason that he or she was innocent, such
11 conviction and sentence shall not be considered as such under this
12 section and section 29-2222.

13 Sec. 3. Original section 29-2221, Reissue Revised
14 Statutes of Nebraska, and section 28-306, Revised Statutes
15 Supplement, 2004, are repealed.